



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 628-00
16 May 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his discharge be upgraded.

2. The Board, consisting of Messrs. Adams, Brezna, and Zalsman, reviewed Petitioner's allegations of error and injustice on 25 April 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 21 July 1958 and served without disciplinary incident.

d. On 2 May 1961, during an Office of Naval Intelligence investigation, Petitioner submitted a written statement in which he admitted to participating in homosexual activities. He further stressed that he had never participated in any homosexual acts while on duty or with anyone in the military. Subsequently,

administrative separation action was initiated by reason of homosexuality.

e. On 17 May 1961 the Chief of Naval Personnel (CNP) directed discharge under other than honorable conditions by reason of unfitness. Accordingly, Petitioner received an undesirable discharged on 24 May 1961.

f. Character of service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Averages of 3.0 in conduct and 2.7 in overall traits were required at the time of Petitioner's separation for a fully honorable characterization of service. Petitioner's averages exceeded these requirements

g. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board initially notes that Petitioner served without any disciplinary infractions. Further, Petitioner stated that he did not participate in any homosexual acts while on duty or with anyone in the military. The Board concludes that because there are no aggravating factors and since Petitioner's conduct and overall trait averages were satisfactory a honorable discharge is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a honorable discharge on 24 May 1961 vice the other than honorable discharge actually issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 28 January 2000.

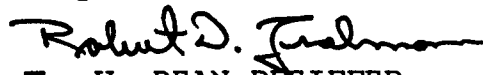
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



For W. DEAN PFEIFFER
Executive Director